

UNITED STATES DISTRICT COURT
for the
EASTERN DISTRICT OF NORTH CAROLINA

U.S.A. vs. Marcus O'Neal Smith

Docket No. 7:16-CR-107-1BO

Petition for Action on Supervised Release

COMES NOW Erik J. Graf, U.S. Probation Officer of the court, presenting a petition for modification of the Judgment and Commitment Order of Marcus O'Neal Smith, who upon an earlier plea of guilty to Conspiracy to Distribute a Quantity of Cocaine Base (Crack), a Quantity of a Mixture and Substance Containing a Detectable Amount of Heroin, and a Quantity of Dibutylone, in violation of 21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(C), was sentenced by the Honorable Terrence W. Boyle, U.S. District Judge, on June 8, 2017, to the custody of the Bureau of Prisons for a term of 12 months. It was further ordered that upon release from imprisonment the defendant be placed on supervised release for a period of 36 months.

Marcus O'Neal Smith was released from custody on June 23, 2017, at which time the term of supervised release commenced.

On July 27, 2017, the probation office requested, and was granted, that Smith's conditions of supervised release be amended to include that he be monitored through random urinalysis testing and treatment, if necessary, and participation in the DROPS program.

On November 30, 2017, Smith's 2-day DROPS sanction resulting from a positive urinalysis result in September 2017 for cocaine, was suspended pending Smith's recovery from hip surgery and complications endured as a result of that surgery.

On February 12, 2018, arrangements were made for Smith to serve a 7-day DROPS term consisting of the aforementioned rescheduled 2-day DROPS sanction, as well as a 5-day DROPS sanction resulting from a positive urinalysis test in December 2017, for marijuana.

RESPECTFULLY PRESENTING PETITION FOR ACTION OF COURT FOR CAUSE AS FOLLOWS:

Smith was scheduled to begin service of the aforementioned 7-day DROPS sanction in March 2018, when he again suffered unforeseen complications in his recovery from two hip surgeries. Smith's physician, as well as his representative from Vocational Rehabilitation (VR), confirmed these complications which included dangerous blood clotting in his legs. Smith's physician and VR counselor requested an alternative to incarceration fearing Smith would not receive ample and sufficient medical care to address the severity of his medical conditions while in a county jail facility.

Additionally, on March 21, 2018, Smith submitted to a urinalysis test which yielded a positive result for cocaine. The offender was confronted about this positive test and admitted that he awoke on a morning days before the test in so much pain he decided to use cocaine. Smith acknowledged he made a mistake, has resumed full participation in substance abuse treatment and testing, and was warned that continued drug use could result in more severe sanctions.

It is recommended Smith be placed on location monitoring for a term of 60 days in place of the DROPS sanctions he cannot serve and act as a punishment for his recent positive urinalysis result from March 2018.

Further, Smith will be required to continue participation in his substance abuse treatment program and the Surprise Urinalysis Program.

The defendant signed a Waiver of Hearing agreeing to the proposed modification of supervision.

PRAYING THAT THE COURT WILL ORDER that supervised release be modified as follows:

1. In lieu of the DROPS program, the defendant shall adhere to a curfew as directed by the probation officer for a period not to exceed 60 consecutive days. The defendant is restricted to his residence during the curfew hours. The defendant shall submit to the following Location Monitoring: Radio Frequency monitoring and abide by all program requirements, instructions and procedures provided by the supervising officer. The defendant must pay all of the cost of the program.

Except as herein modified, the judgment shall remain in full force and effect.

Reviewed and approved,


I declare under penalty of perjury that the foregoing
is true and correct.

/s/ Robert L. Thornton
Robert L. Thornton
Supervising U.S. Probation Officer

/s/ Erik J. Graf
Erik J. Graf
U.S. Probation Officer
2 Princess Street, Suite 308
Wilmington, NC 28401-3958
Phone: 910-679-2031
Executed On: April 12, 2018

ORDER OF THE COURT

Considered and ordered this 13 day of April, 2018, and ordered filed and made
a part of the records in the above case.


Terrence W. Boyle
U.S. District Judge